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Letter Ruling 93-6: Massachusetts Tax Treatment of a Qualified REIT Subsidiary

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April 21, 1993

You have requested a ruling as to whether the taxable net income of a corporate subsidiary which is a "qualified REIT subsidiary" under § 856(i) of the Internal Revenue Code (the "Code") would be attributed to its parent under G.L. c. 63, as it is under the Code.

I. FACTS

Your client, ***** ("Parent") was organized as a Massachusetts business trust in 1971 and from its inception has elected to be treated as a real estate investment trust ("REIT") under Code § 856. In order to insulate itself from certain Massachusetts real estate liabilities, Parent will organize a corporation (the "Subsidiary") under the laws of Delaware and transfer to the Subsidiary an interest in a partnership that holds Massachusetts real estate. One hundred percent of the stock of Subsidiary will at all times be held by Parent, and Subsidiary will be a "qualified REIT subsidiary" within the meaning of Code § 856(i).

II. DISCUSSION

A. Massachusetts Law

Chapter 63, § 39, provides that a foreign corporation exercising its charter, or qualified to do business or actually doing business in the Commonwealth, or owning or using any part or all of its capital, plant or any other property in the Commonwealth, shall pay an excise for each taxable year. The excise is equal to the greater of a minimum amount, or an amount equal to the sum of (1) an amount based upon the corporation's tangible property or net worth and (2) an amount based upon its net income determined to be taxable.

Chapter 63, § 42A, provides that a corporation's net income subject to tax under G.L. c. 63 is the corporation's taxable net income apportioned to the Commonwealth under G.L. c. 63, § 38. In addition, G.L. c. 63, § 38 apportions to the Commonwealth a corporation's "net income" as defined in G.L. c. 63, § 30, with certain modifications.

"Net income" is defined in G.L. c. 63, § 30.4, as "gross income less the deductions, but not the credits, allowable under the provisions of the Federal Internal Revenue Code, as amended and in effect for the taxable year...." Moreover, "gross income" is defined in G.L. c. 63, § 30.3, as "gross income as defined under the provisions of the Federal Internal Revenue Code, as amended and in

effect for the taxable year...."

B. Federal Law

The provision of the Code pertaining to "gross income" is Code § 61. Code § 61(a) states that:
"Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
...(13) Distributive share of partnership gross income;...."

Code § 856(i) pertains to certain wholly-owned subsidiaries of a REIT. Code § 856(i)(1) provides, in pertinent part:

(1) IN GENERAL.--For purposes of this title--

(A) a corporation which is a qualified REIT subsidiary shall not be treated as a separate corporation, and

(B) all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary^[1] shall be treated as assets, liabilities, and such items (as the case may be) of the real estate investment trust.

The effect of Code § 856(i) is that a qualified REIT subsidiary will not have any federal gross income, notwithstanding the provisions of Code § 61.

III. CONCLUSION

Subsidiary will not have any net income under c. 63, since it will have not have any gross income under the Code. For this reason, the net income measure of the Subsidiary's Massachusetts corporate excise will equal zero.

Nonetheless, Subsidiary will be required to pay a corporate excise under G.L. c. 63, § 39. This corporate excise will equal the greater of a minimum amount (currently \$456), or an amount based upon the corporation's tangible property or net worth.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:mtf

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^[1] Code § 856(i)(2) defines a "qualified REIT subsidiary" as "any corporation if 100 percent of the stock of such corporation is held by the real estate investment trust at all times during the period such corporation was in existence."

